

1902595 (Migration) [2019] AATA 4959 (20 September 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1902595

MEMBER: Hugh Sanderson

DATE: 20 September 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 20 September 2019 at 2:43pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – Federal Circuit Court remittal – relationship ceased – family violence claim – non-judicially determined claim – evidential requirements – social worker – no counselling or assistance provided – psychologist – no treatment received – no valid claim to consider – decision under review affirmed

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5CB, 65

Migration Regulations 1994 (Cth), rr 1.21, 1.23, 1.24, 1.25; Schedule 2, cls 820.211, 820.221

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 24 August 2015 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
3. The applicant applied for the visa on 4 October 2013 on the basis of his relationship with his sponsor, [Ms A]. At that time, Class UK contained Subclass 820. The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
4. Relevantly to this matter, the primary criteria include cl.820.211 and cl.820.221, which require that at the time of application and decision, the applicant be the spouse or de facto partner of the sponsor, unless the relationship has ceased and certain circumstances exist. These include that the applicant has suffered family violence committed by the sponsor: cl.820.211(8) or (9) and cl.820.221(3)(a) and (3)(b)(i). The applicant claims this occurred in this case.
5. The delegate refused to grant the visa on the basis that the applicant did not meet cl.820.221 because the applicant had acknowledged that he was no longer in a continuing relationship with the sponsor and, despite claiming he had been the victim of family violence, had not provided any of the evidence required under the Regulations to show that he had suffered relevant family violence.

Background

6. The applicant is a citizen of Chile and is currently [age] years old. He was sponsored in his application by [Ms A] who was born in Australia and is an Australian citizen. She is currently [age] years old. It was claimed the parties met [in] January 2012 and a relationship began. It was claimed they committed to a de facto relationship with each other in April 2012. They registered their relationship on 29 May 2013.
7. The sponsor contacted the Department on 27 January 2014 to advise it that her relationship with the applicant had ceased and she was withdrawing her sponsorship of the application. The Department wrote to the applicant inviting him to comment on this information. The applicant responded on 30 January 2014 stating that he and the sponsor had separated, but he was hoping for a reconciliation with the sponsor.
8. The Department wrote to the applicant on 23 September 2014 again noting that the sponsor had withdrawn her sponsorship of the application and the relationship had come to an end. The applicant was invited to comment on this information. He was advised that if his relationship had come to an end he might still be granted a visa if he had suffered family violence committed by the sponsoring partner.
9. The applicant responded by providing statements by, [Mr B], [Mr C] (the sponsor's step-father) and [Ms D] (the sponsor's mother) where it was claimed the applicant had suffered mental, physical and financial abuse from the sponsor until she kicked him out of the home where they were living. The applicant's agent wrote to the Department claiming the applicant had not advised the Department earlier as the applicant wanted the matter to be resolved within the family.

10. The Department wrote again to the applicant on 27 October 2014 noting the regulatory requirements required to establish a claim of relevant family violence. The applicant was invited to comment on this and provide information in support of the application. The applicant's agent responded on 26 November providing further documentation claiming that the relationship between the applicant and the sponsor was genuine. The Department again wrote to the applicant on 19 February 2015 requesting information to establish a claim that he had suffered relevant family violence and provided the family violence evidentiary requirements. No new information was provided.
11. The delegate who considered the application noted that it had been acknowledged by the applicant that his relationship with the sponsor had ended. There was no information that the sponsor had died or that there was a child of the relationship. Despite the Department requesting on several occasions for the applicant to provide evidence that he had suffered relevant family violence, no evidence had been provided. Accordingly, the delegate found the applicant did not meet the criteria in cl.820.221 and refused the application.

Information to the Tribunal

12. The matter came before the Tribunal (differently constituted) and a decision was made on 6 December 2016 affirming the Department's decision. That decision was based on a finding that the applicant had never been the de facto partner, as defined in s.5CB of the Act, and therefore did not meet the criteria in cl.820.211. In those proceedings, the applicant did not provide any relevant information as required under the Regulations that he had suffered relevant family violence although he acknowledged that he was no longer in a relationship with the sponsor.
13. That decision of the Tribunal was remitted by the Department by consent based on the failure of the Tribunal to take into account statements provided by witnesses.
14. The Tribunal wrote to the applicant on 8 July 2019 inviting him to attend the hearing before the Tribunal. The Tribunal noted that the applicant had stated that he was no longer in a continuing relationship with the sponsor but had claimed that he had suffered relevant family violence. The applicant was invited to provide details of the information the applicant was relying upon to establish the claim that he had suffered relevant family violence.
15. The applicant's agent requested a postponement of the hearing on the basis that he was unable to attend the hearing. That postponement was granted.
16. The applicant provided the following documents in support of the application:
 - Statutory declaration of the applicant dated 31 July 2019;
 - Statutory declaration of [Ms E], social worker, dated 6 August 2019; and
 - Report of [Ms F], psychologist, dated 30 July 2019.
17. The applicant appeared before the Tribunal on 5 September 2019 to give evidence and present arguments. The applicant was represented in relation to the review by his registered migration agent who attended the hearing.
18. The applicant said that he had been living with his current partner for the last two years. He said they had a [age] old child. The applicant works for [Company 1] as a [Occupation 1]. He has worked for [Company 1] for the last 10 years in [specified area] and as a [Occupation 1] for the last year. He said that he had no medical problems and the only time he has seen a doctor or medical professional was in April 2014 when he [suffered injury] playing [a sport].

19. The applicant said that he first met the sponsor in January 2012 in [specified place] at a mutual friend's function. He said the sponsor was working two days a week as a [Occupation 2] at [specified workplace]. She was living in the home she was renting in [Suburb 1], [City 1]. He said that he was living in Sydney, working with [Company 1] and studying. He said that their relationship started after that time and the sponsor would travel to Sydney every second weekend when her daughter was with her father and he would travel to [City 1] every other weekend.
20. The applicant said that over the time that they were together the sponsor never travelled overseas. The Tribunal explained to the applicant the process under s.359AA of the Act. It explained that it would be putting to him information which would be the reason, or a part of the reason, for affirming the decision under review. It would explain what this information was, why it was relevant and then invite the applicant to comment on or respond to the information. If he required more time, he could request an adjournment.
21. The Tribunal referred to the sponsor's movement records which showed that she had travelled overseas [from] November 2012 [to] December 2012. This was relevant as it was inconsistent with the information that the applicant had provided, which was that the sponsor never travelled overseas at any time during their relationship. This was relevant as it indicated the applicant was not aware of the sponsor's overseas travel, which he would have been if they had been in a genuine and continuing relationship. This indicated the claims made by the applicant as to their relationship were not credible.
22. The applicant again stated that he could not remember the sponsor travelling overseas at any time during their relationship. He said that she might have travelled to [Country 1] but said that he did not remember her travelling overseas.
23. The applicant said that he moved into the sponsor's home in April 2013. He said that he could not find work in [City 1] and so returned to work with [Company 1]'s, who he had been working for when he was a student in Sydney, three days a week, in May 2013. He said that he stopped studying in Australia, even though he was in receipt of a Student visa because his agent told him that this would be allowed as he would be applying for a Partner visa. He said that he was working in Sydney for [Company 1] in their [specified area] on [Day 1], [Day 2] and [Day 3], commuting by train from [City 1] each day.
24. The applicant said that he and the sponsor did not socialise with many people in [City 1]. He said that he did not have any friends there but they saw her family and her work friends. He claimed they went shopping together.
25. The Tribunal noted that the parties had obtained a joint residential tenancy agreement for the home in which the sponsor had been living in before the relationship. It was noted the landlords for the home were the sponsor's mother and stepfather. The applicant said they arranged for a joint residential tenancy agreement to be drawn up because their visa agent said they needed it. He said that he felt he needed to be responsible for the home so a joint tenancy agreement was entered into.
26. The Tribunal referred to the arrangements for the parties to be married which had been cancelled. The applicant said that he believed the marriage was planned [for] September 2014. He said that he had sent invitations to all their friends prior to the sponsor cancelling the wedding. He said that invitations had been sent to his family in Chile and he was required to call them to tell them the engagement was off.
27. The Tribunal noted that the information provided by the applicant to the Department was that the wedding was to take place [in] September 2013. The applicant said he had a bad memory for dates and could not recall exactly when things happen. He could not recall when

the sponsor cancelled the proposed wedding. The Tribunal noted that the applicant was claiming he only proposed marriage to the sponsor after the Partner visa application had been filed but the wedding was proposed to take place prior to the Partner visa application having been filed. The applicant again claimed that he could not remember dates.

28. The applicant said that the sponsor had a bank account in her sole name into which her income, including a pension which he believed she received, was paid. He had a bank account in his sole name into which his income was paid. He said that they opened a joint bank account to save money together. He said that he deposited \$12,000 into this account but the sponsor did not deposit any money into it. He said that when they separated the money in that account was shared equally between them.
29. The applicant said that he started to suffer family violence when he started working again with [Company 1] a month after starting to live with the sponsor in April 2013. He claimed that the sponsor was insulting him by calling him names and was not supporting his work. He claimed she was always demanding money from him and saying that if he did not find a job she would send him back to his country. He claimed that she was always swearing at him. He claimed the only physical violence occurred in January 2014 as described in his statement.
30. The Tribunal noted that it seemed unusual that if he was fearful for his well-being or safety in April or May 2013, six months before the Partner visa application was filed, he would continue his relationship with the sponsor. This indicated that neither party had a mutual commitment to a shared life to the exclusion of all others or that they were in a genuine and continuing relationship. The applicant said that he loved the sponsor, which is why he wanted to continue the relationship.
31. The applicant said that he went to see [Ms E], social worker, because he needed an assessment for domestic violence. He said that he made the arrangements to see [Ms E] and have the report obtained. He has not seen [Ms E] again since obtaining the report.
32. The applicant said that his agent made the arrangements for him to see [Ms F] to obtain the report. He said that he has not seen [Ms F] again since the report was obtained but was thinking about going back to see her. He said that [Ms F] had also suggested that he be referred somewhere.
33. The Tribunal noted the evidentiary requirements for a claim of non-judicially determined family violence. For a report from a social worker to be accepted, the social worker was required to have been providing counselling or assistance to the alleged victim while performing the duties of the social worker. For a psychologist, it must be from a psychologist who has treated the alleged victim while performing the duties of a psychologist. The reports from both [Ms E] and [Ms F] appeared to be obtained purely for the purposes of an immigration assessment. It appeared that [Ms E] had not provided counselling or assistance to the applicant. It appeared that [Ms F] had not treated the applicant.
34. The applicant confirmed that he had not received any treatment from [Ms F] or [Ms E]. He said that all this makes him very sad and puts him in a bad mood. He said that he had been poorly represented by his previous advisor and that he had received no treatment at any time. He said that it was because he had been poorly represented that he has only now obtained these documents.
35. The applicant was given further time to provide information. The applicant provided statements from himself, his current partner and submissions from his agent.

36. In the applicant's statement, the applicant repeated his claims that he had been in a genuine relationship with the sponsor. He claimed they became engaged to be married in March 2013 and claimed he gave incorrect dates during the hearing because he was confused and remembering dates had always been difficult for him. He claimed that his relationship with the sponsor's family had always been based on mutual respect and he turned to the sponsor's mother when the sponsor was abusive towards him because he felt comfortable telling her these things. He said that as a man, he felt humiliated by being abused by the sponsor and that was why he did not seek any help or contact the police. He said the sponsor's mother was also concerned as to how any police report would affect her daughter's work.
37. The applicant's current partner argued that it would be devastating for her and their child if the applicant was refused a visa to remain in Australia.
38. The applicant's agent submitted that it was in the best interests of the applicant's child for the applicant to remain in Australia. No submissions were made as to whether the documents provided by the applicant met the requirements for establishing a non-judicially determined claim of family violence.
39. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

40. In the present case, the applicant claims the relationship with the visa sponsor has ceased, and he has been the victim of family violence.
41. For the purposes of this decision, the Tribunal has accepted at face value the claims made by the applicant that he and the sponsor were in a genuine spousal relationship at the time of the application and that relationship ended in January 2014. It is noted that the applicant contacted the Department on 30 January 2014 advising the Department that his relationship with the sponsor had broken down but he was hoping to reconcile his relationship with the sponsor. On the evidence of the applicant, he did not have any further contact with the sponsor after this time.
42. The issue that arises on the evidence in this case is whether the applicant has suffered family violence committed by the sponsor, within the meaning of the Regulations.
43. Under r.1.23 of the Regulations, a person is taken to have suffered or committed family violence if: there is evidence tested before a court; or the visa application includes a non-judicially determined claim of family violence, and either the Minister (or the Tribunal on review) is satisfied that the alleged victim has suffered relevant family violence or an opinion of an independent expert has been given that the alleged victim has suffered relevant family violence. Relevant family violence is defined in r.1.21. These regulations, as relevant to this decision, are extracted in the attachment to this decision. The Tribunal notes that the violence, or part of the violence must have occurred during the relationship: r.1.23(3), (5), (7), (12), (14).
44. In the present case the applicant is seeking establish family violence on the basis of a non-judicially determined claim of family violence. No report has been made to the police as to any claim the applicant had suffered family violence and no court proceedings have taken place between the applicant and the sponsor.

Has a claim of family violence been made under the Regulations?

45. Under r.1.23, a visa application is taken to include a non-judicially determined claim of family violence where either a joint undertaking to a court has been made by the alleged victim and alleged perpetrator or evidence in accordance with r.1.24 is provided.
46. The applicant in this case is seeking to rely on evidence referred to in r.1.24 – namely, a statutory declaration under r.1.25 and evidence of a type and number specified by the Minister for these purposes (see IMMI12/116).
47. A statutory declaration under r.1.25 must be made by the spouse or partner of the alleged perpetrator. If the alleged victim is the spouse or partner, the statutory declaration must set out the allegation of family violence, name the person alleged to have committed the relevant family violence and if the *conduct* was not directed at the spouse or partner, name the person to whom it is directed and their relationship with the deponent: r.1.25(2).
48. The Department, before making its decision, wrote to the applicant on 19 February 2015 noting he had stated that his relationship with the sponsor had ended. He was requested to provide further information in support of the application and was provided information as to the evidentiary requirements if he was claiming he had suffered relevant family violence. The applicant did not provide any information that he had suffered relevant family violence to the Department prior to it making its decision.
49. At the previous hearing before the Tribunal, the applicant did not provide any information that he had suffered relevant family violence.
50. When the applicant was invited on 8 July 2019 to attend the hearing before the Tribunal, the Tribunal specifically requested the applicant provide particulars of all information he intended to rely upon in accordance with the Regulations to show that he had suffered relevant family violence. The applicant provided the following documents:
 - Statutory declaration of the applicant dated 31 July 2019;
 - Statutory declaration of [Ms E], social worker, dated 6 August 2019; and
 - Report of [Ms F], psychologist, dated 30 July 2019.
51. The Tribunal has considered whether the statutory declaration of [Ms E] meets the evidentiary requirements. [Ms E] is stated to be a social worker. For a statutory declaration by a social worker to meet the evidentiary requirements the social worker must have provided counselling or assistance to the alleged victim while performing the duties of a social worker.
52. The statutory declaration of [Ms E] states: “The purpose of this Statutory Declaration, is to state in the writer’s opinion that the alleged victim was subject to family violence, the reasons for the opinion and to identify the alleged perpetrator.” It does not indicate that [Ms E] has at any time provided counselling or assistance to the applicant.
53. The evidence of the applicant at the hearing was that he had only consulted [Ms E] because he was told that he was required to obtain a report. He only saw her on one occasion to be interviewed for the report to be prepared. He did not receive any counselling or assistance. He consulted [Ms E] more than five years after his relationship with the sponsor had ended.
54. The Tribunal finds that [Ms E] has not provided counselling or assistance to the applicant while performing the duties of a social worker. The only basis of the consultation was to

obtain a report from a person that would otherwise be qualified to provide a report to support a claim of family violence. There is no information which would indicate the applicant was at any time in the past or has any intention to consult [Ms E] for counselling or assistance in relation to any claim of having suffered relevant family violence. The Tribunal finds the report from [Ms E] is not the type of evidence that is required to establish a claim that the applicant has suffered non-judicially determined family violence.

55. The Tribunal has considered whether the report from [Ms F] meets the evidentiary requirements. [Ms F] is a forensic psychologist. For a report from a registered psychologist to meet the evidentiary requirements to establish a claim that the applicant has suffered relevant family violence, the evidence must be in the form of a statutory declaration made by a registered psychologist who has treated the alleged victim while performing the duties of a psychologist.
56. The purpose for [Ms F] seeing the applicant was stated to be "for psychological assessment and preparation of a report". There is no indication that [Ms F] provided treatment for the applicant at any time. The evidence of the applicant was that he only consulted [Ms F] on one occasion in order to obtain the report and no further appointments were made to consult [Ms F] or obtain any treatment from her or anyone else. The applicant indicated that [Ms F] suggested that he be referred to someone else, however, there is no information that the applicant has sought any treatment from any psychologist for any reason.
57. The Tribunal finds that [Ms F] has not treated the applicant while performing the duties of a psychologist. The only purpose of the applicant seeing [Ms F] has been for the purpose of obtaining the report. This was only done more than five years after he claimed his relationship with the sponsor had ended. There is no information which would indicate the applicant has received treatment from any medical professional at any stage in respect of the claims he has suffered relevant family violence. The only medical treatment the applicant has received over the five years after he claimed his relationship with the sponsor ended was in relation to an injury he suffered playing [sport]. He has continued his work and has entered into a relationship with another person with whom he has a child. Despite [Ms F] claiming that the events of the breakdown of his relationship with his sponsor has caused him distress and impaired his functioning, there is no evidence to support this claim and he has done nothing to address any claimed emotional trauma. He has not sought any treatment since [Ms F] provided the report.
58. The issue of whether the reports of [Ms F] and [Ms E] met the family violence evidentiary requirements was specifically raised by the Tribunal during the hearing. The Tribunal gave the applicant and his agent further time to provide further information to the Tribunal after the hearing. The statements by the applicant and his current partner did not address the issue of whether the reports of [Ms F] and [Ms E] meet the evidentiary requirements to establish a claim that the applicant has suffered relevant family violence.
59. The submissions made by the applicant's agent do not address the issue of whether the reports of [Ms F] and [Ms E] meet the family violence evidentiary requirements. They refer to the fact that the applicant is now in a relationship with another person and they have a child together. It is submitted that as the applicant has an Australian citizen child it would be in the best interests of that child that the applicant be able to remain in Australia. This is not relevant to whether the applicant meets the criteria for the grant of the Subclass 820 Partner visa. If the applicant wished to make an application for Ministerial intervention this issue might be relevant, however, the fact that after the applicant ended his relationship with the sponsor he commenced a relationship with another woman and has a child of that relationship is not relevant when considering whether the applicant meets the criteria for the grant of the visa based on his relationship with the sponsor.

60. The Tribunal finds the statutory declaration by [Ms E] and the report of [Ms F] do not meet the criteria for the type of evidence required to establish a non-judicially determined claim that the applicant suffered relevant family violence. Therefore, the evidence presented does not meet the requirements of r.1.24. As such, a non-judicially determined claim of family violence has not been made under r.1.23.
61. Given the above conclusion that the claim of family violence has not been established, the applicant does not meet the requirements of cl.820.221(3) for the grant of the visa. There is no evidence before the Tribunal that the applicant meets any of the alternative sub criteria. As the applicant does not meet an essential criterion for the visa, the Tribunal must affirm the decision under review.

DECISION

62. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Hugh Sanderson
Member

ATTACHMENT – EXTRACTS FROM THE MIGRATION REGULATIONS 1994

1.21 Interpretation

In this Division:

independent expert means a person who:

- (a) is suitably qualified to make independent assessments of non-judicially determined claims of family violence; and
- (b) is employed by, or contracted to provide services to, an organisation that is specified, in a legislative instrument made by the Minister, for the purpose of making independent assessments of non-judicially determined claims of family violence.

non-judicially determined claim of family violence has the meaning given by subregulations 1.23(8) and (9).

relevant family violence means conduct, whether actual or threatened, towards:

- (a) the alleged victim; or
- (b) a member of the family unit of the alleged victim; or
- (c) a member of the family unit of the alleged perpetrator; or
- (d) the property of the alleged victim; or
- (e) the property of a member of the family unit of the alleged victim; or
- (f) the property of a member of the family unit of the alleged perpetrator;

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.

statutory declaration means a statutory declaration under the *Statutory Declarations Act 1959*.

violence includes a threat of violence.

...

1.23 When is a person taken to have suffered or committed family violence?

(1) For these Regulations, this regulation explains when:

- (a) a person (the alleged victim) is taken to have suffered family violence; and
- (b) another person (the alleged perpetrator) is taken to have committed family violence in relation to the alleged victim.

Note Schedule 2 sets out which visas may be granted on the basis of a person having suffered family violence. The criteria to be satisfied for the visa to be granted set out which persons may be taken to have suffered family violence, and how those persons are related to the spouse or de facto partner of the alleged perpetrator mentioned in this regulation.

Circumstances in which family violence is suffered and committed — injunction under Family Law Act 1975

- (2) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if, on the application of the alleged victim, a court has granted an injunction under paragraph 114(1)(a), (b) or (c) of the Family Law Act 1975 against the alleged perpetrator.
- (3) For subregulation (2), the violence, or part of the violence, that led to the granting of the injunction must have occurred while the married relationship between the alleged perpetrator and the spouse of the alleged perpetrator existed.

Circumstances in which family violence is suffered and committed — court order

- (4) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; and
 - (b) [...] order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter.

- (5) For subregulation (4), the violence, or part of the violence, that led to the granting of the order must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — conviction

- (6) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if a court has:
- (a) convicted the alleged perpetrator of an offence of violence against the alleged victim; or
 - (b) recorded a finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim.
- (7) For subregulation (6), the violence, or part of the violence, that led to the conviction or recording of a finding of guilt must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — non-judicially determined claim of family violence

- (8) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.
- (9) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim is:
 - (i) a spouse or de facto partner of the alleged perpetrator; or
 - (ii) a dependent child of:
 - (A) the alleged perpetrator; or
 - (B) the spouse or de facto partner of the alleged perpetrator; or
 - (C) both the alleged perpetrator and his or her spouse or de facto partner; or
 - (iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and
 - (c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:
 - (i) the alleged victim has suffered relevant family violence; and
 - (ii) the alleged perpetrator committed that relevant family violence.
- (10) If an application for a visa includes a non-judicially determined claim of family violence:
- (a) the Minister must consider whether the alleged victim has suffered relevant family violence; and
 - (b) if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and
 - (c) if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:
 - (i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and
 - (ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.

- (11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is satisfied under paragraph (10)(b) that the alleged victim has suffered relevant family violence.
- (12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.
- (13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is required by subparagraph (10)(c)(ii) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.
- (14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.